IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 28296 of 2005(R)

OS.40/2001 of PRL.S.C.,THALASSERY

.....

PETITIONER:

PREMKEERTH, S/O.SREEDHARAN,
AGED 28, MOTTAMMEL OLACHERY HOUSE,
TALAP, KANNUR.

BY ADV. SRI.P.M.PAREETH
SRI.M.BENNY JOSEPH

RESPONDENTS:

---

1. CENTRAL BANK OF INDIA CANNANORE,
REP. BY ITS MANAGER CANNANORE.

2. NIRMALA PREMARAJAN, W/O.LATE PREMARAJAN,
AGED 46, "DEVAKI NIVAS", PALLIKUNNU,
KANNUR.

3. M.K.PREMKEERTH, S/O.LATE
PREMARAJAN, AGED 22, "DEVAKI NIVAS",
PALLIKUNNU, KANNUR.

4. M.K.NITHYA, D/O.LATE PREMARAJAN,
AGED 19, "DEVAKI NIVAS", PALLIKUNNU,
KANNUR.

BY ADV. SRI.P.K.RAVISANKAR
SRI.M.P.RAMACHANDRAN NAIR
SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE RECEIPTS DT.26.9.03, 10.10.03 AND 17.3.05 ISSUED BY MUNSIFF COURT, KANNUR.

EXT.P2 : TRUE COPY OF THE EP NO.227/02 IN OS NO.40/01, PRINCIPAL SUBORDINATE COURT, THALASSERY.

EXT.P3 : TRUE COPY OF THE APPLICATION EA NO.204/05 DT.26.5.05.

EXT.P4 : TRUE COPY OF THE ORDER DT.9.9.05 IN EA NO.204 OF 2005 IN EP NO.227 OF 2002 IN OS NO.40 OF 2001, PRINCIPAL SUBORDINATE COURT, THALASSERY.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28296 OF 2005

Dated this the 11th day of June, 2007

JUDGMENT

The property belonging to the father of respondents 2 to 4 was purchased in court auction by the petitioner. But even at that time the said property was outstanding on an equitable mortgage with the 1st respondent-Central Bank of India. The 1st respondent had already obtained a sale decree in its favour in respect of the properties and the court auction in the petitioner's favour was without reference to the mortgage. On coming to know the 1st respondent has initiated execution proceedings for bringing the mortgaged property to sale, the petitioner filed EA No.204 of 2005 lodging his claim over the property and seeking his impleadment in the Execution Petition.

2. Today when the case came up for consideration, Mr.P.M.Pareeth, counsel for the petitioner submits that the intention of the petitioner is to pay off the decree debt which is due to the 1st respondent in full and to enable that, his impleadment in the Execution Petition is necessary. It appears on reading of Ext.P4 that noticing the above stand of the petitioner the learned Subordinate Judge granted more than one opportunities to the petitioner. It is only noticing that the

opportunities were not availed by him that the learned Subordinate Judge dismissed the application ultimately. Sri.P.M.Pareeth, counsel for the petitioner has asserted before me that if a month's time is given the petitioner will pay off the decree debt.

3. Under these circumstances, I am inclined to dispose of the Writ Petition itself issuing the following orders:

The order of stay presently passed will continue for a period of two more months from today. The petitioner will get in touch with the 1st respondent's advocate in the lower court immediately and find out as to what is the precise amount to be paid by him in full and final settlement of the Bank's claims under the decree. Once that is known, he will pay the amounts to the Bank. Payment as directed above will be made by the petitioner on the first posting date of the case in the month of August 2007. Once the learned Sub Judge finds that the petitioner is ready with cash the learned Sub Judge will allow EA No.204 of 2005 and formally bring the petitioner on the array as additional party in the EP. Thereafter the learned judge ensure that the payment is made and full satisfaction is recorded. Once that is done the petitioner will become entitled for getting back the documents pertaining to the property either from the Bank or from the court, who ever is the present custodian of the

documents. If payment is not made within the time stipulated above, the Writ Petition will stand dismissed and the impugned order will stand confirmed.

PIUS C. KURIAKOSE, JUDGE

btt